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IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

No. 817

W. C. & A. N. MILLER DEVELOPMENT CO.,
Petitioner,

v.

EMMA PROPERTIES CORPORATION.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

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Press of Byron S. Adams, Washington, D. C.

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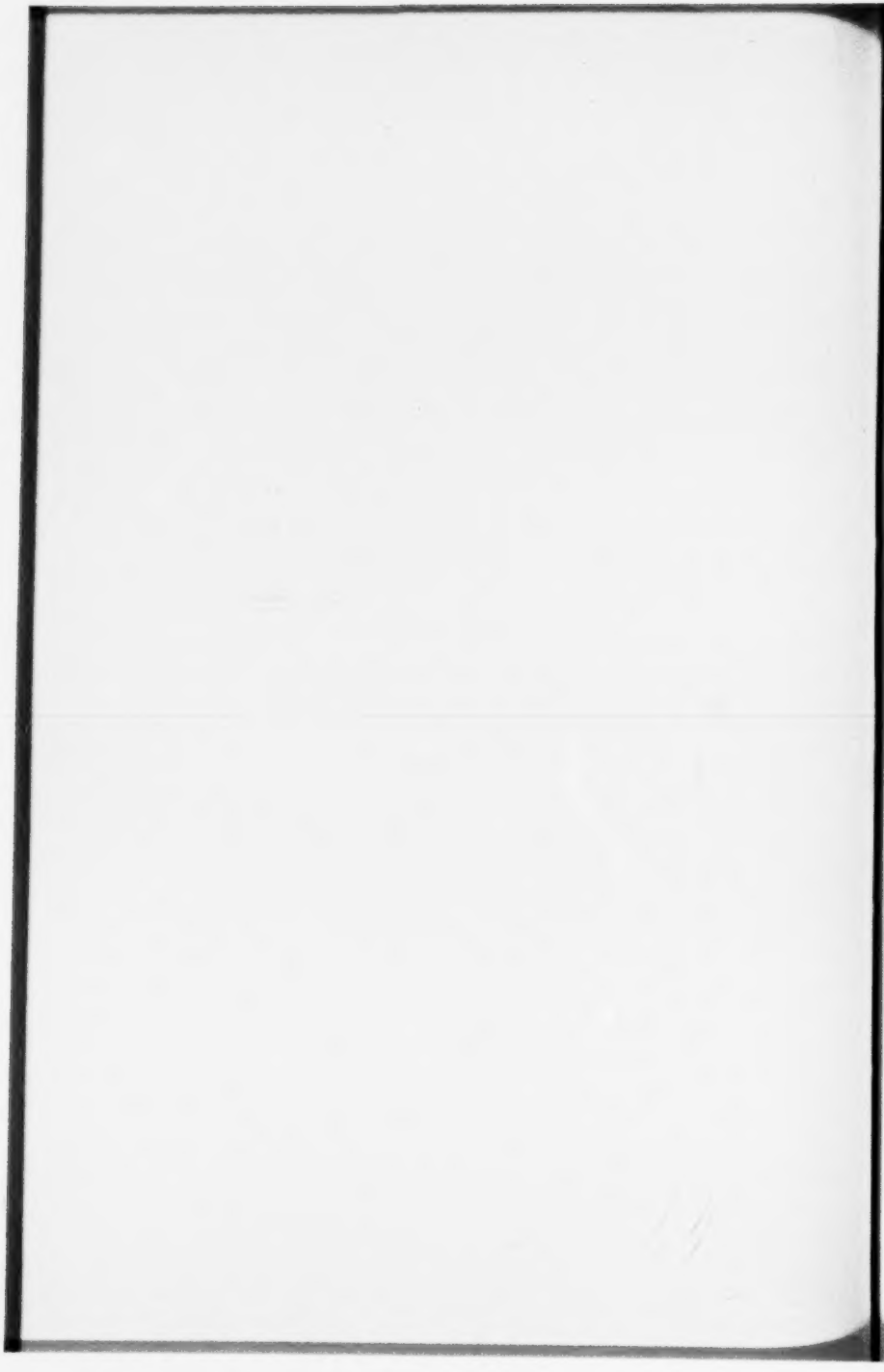

IN THE

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OCTOBER TERM, 1942.

No. .....

W. C. & A. N. MILLER DEVELOPMENT CO.,
Petitioner,

v.

EMIG PROPERTIES CORPORATION.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

PETITION.

The petition of W. C. & A. N. Miller Development Company respectfully represents:

STATEMENT OF THE MATTER INVOLVED.

First: By complaints filed in the District Court of the United States for the District of Columbia (R. 1-7 and R. 28-30) petitioner sought to have removed, as a cloud upon its record fee title to lots 21 and 22 in square 1476 in District of Columbia, a tax deed made by the Commissioners

of the District of Columbia which conveyed these lots to the Emig Properties Corporation in consideration of the payment by it of taxes assessed for the years ending June 30, 1931, and June 30, 1934, aggregating $14.91 (R. 4-5) upon the ground, inter alia, that the lots were not assessed on July 1, 1930 for the 1931 taxes in the names of their then record owners as required by the Act of Congress under which the assessment was made (R. 29); the contention being that Lot 21 should have been assessed in the names of the devisees of Mary J. B. Wright and Lot 22 should have been assessed in the names of the devisees of Martha L. Compbell, as required by the statute under which the assessment was made, their Wills being of record in the District of Columbia prior to July 1, 1930, the date the assessment was made.

The statute under which the attacked tax deed was given (Section 793, Title 20, page 255 of 1929 D. C. Code) provides that the tax deed "shall be admitted and held to be prima facie evidence of a good and perfect title in fee simple to any property bought at said sale herein provided for." But the law is that an invalid tax deed may be removed, for cause shown, as a cloud upon the record owner's title to property. *Kann* v. *King,* 25 App. D. C. 182.

Petitioner acquired the fee simple record title to these lots by purchase on September 10, 1935. Both lots are unimproved and in 1940 they were valued for taxation purposes at $1,325.00 (R. 36). Petitioner's title to Lot 21 was deraigned through the devisees of Mary J. B. Wright who got title by deed dated July 1, 1895, and recorded August 20, 1895, and who died seized thereof on March 13, 1921 (R. 33). Exemplified copy of her probated Will was filed in the Probate Court of the District of Columbia on March 21, 1930, whereby she devised the lot to her sister, Martha L. Campbell, for life, with remainder in fee to Kate Wertz Fleck and Harry S. Fleck, equally. Petitioner's record title to Lot 22 was deraigned through the devisees of Martha L. Campbell who got title thereto by deed dated May 11, 1895, and recorded May 14, 1895, and who died

seized thereof on December 1, 1918 (R. 33). Exemplified copy of her probated Will was filed in the Probate Court of the District of Columbia on March 21, 1930 (R. 51), whereby she devised the lot to her sister, Mary J. B. Wright, during her lifetime, with remainder in fee to Harry S. Fleck, as trustee, in trust for J. Hurst Campbell during his lifetime and upon his death to Kate Wertz Fleck, one-half, and the remaining one-half among the three children of Edith Wertz Irwin, deceased, namely, John Irwin, Gwendolyn Irwin and Lenore Irwin (R. 33). In connection with the above history of the titles, it is important to bear in mind three facts: (1) That Harry S. Fleck was a devisee named in each of the Wills; under one Will he acquired a half interest in Lot 21 while under the other Will he was trustee for the remaindermen of Lot 22; (2) that Mary J. B. Wright died March 13, 1921 and Martha L. Campbell died December 1, 1918, and (3) exemplified copies of their probate Wills were filed March 21, 1930, in the Probate Court of the District of Columbia.

Second: On July 1, 1921, for the taxes for the year ending June 30, 1922, the District of Columbia assessed Lot 21 in the name of Mary J. B. Wright *as owner* (she had then been dead since March 13, 1921), and assessed Lot 22 in the name of Martha L. Campbell *as owner* (she had then been dead since December 1, 1918). The irregularity of this assessment of the lots in the names of these deceased persons (*as owners*) was pointed out and asserted in the amended complaint (R. 28-29).

The Act of Congress under which the lots were assessed on July 1, 1921 for the taxes for the year ending June 30, 1922, reads:

> "All real property in the District of Columbia except as hereinafter provided, shall be assessed in the name of the owner, or trustee or trustees of the owner thereof. All undivided real property of a deceased person may be assessed in the name of such deceased person until the same is divided, according to law, or has

> otherwise passed into the possession of some other person or persons; and all real property, the ownership of which is unknown, shall be assessed 'owner unknown.'" D. C. Code (1940) s. 47-701 (D. C. Code (1929) tit. 20, s. 696).

The 1922 taxes not having been paid by the owners of the lots, i.e., the devisees of Mary J. B. Wright and Martha L. Campbell, the lots were advertised for sale therefor in the names of Mary J. B. Wright and Martha L. Campbell, *as owners,* and bought in by the District of Columbia at the tax sale. And as the devisee-owners did not afterwards redeem the lots from the tax sale, the Commissioners of the District of Columbia, on April 23, 1929, sold and by deed conveyed them to James S. Fraser (R. 2).

If, under the aforesaid statute, the lots were *improperly* assessed for the 1922 taxes in the names of dead people, *as owners,* then the deed to Fraser was voidable and a cloud on the record title of the devisee-owners of the lots.

But without their questioning the validity of that assessment, Harry S. Fleck, who was co-owner of half interest in remainder in lot 21 under the Will of Mary J. B. Wright and the owner, as trustee, of lot 22, in remainder, under the Will of Martha L. Campbell (R. 33), obtained a deed dated November 7, 1929 from James S. Fraser for said lots (R. 2) which deed petitioner contended (R. 29) created no independent title in Fleck, and that whatever title he acquired through it enured to his co-owners as devisees under the Wills (R. 29). It was simply a redemption deed.

In the decision of this litigation in the Court of Appeals, Mr. Justice Rutledge said (mistakenly, however, in view of the allegation in paragraph thirteen of the amended complaint, R. 28):

> "It is not contended that there was any irregularity in the tax deed to James S. Fraser and his wife. It was proper for the Commissioners to assess the lots for the 1922 taxes in the names of deceased 'owners' because the Wills had not then been probated, and it is

not shown that the Commissioners were given notice of their deaths or who were the 'owners' under their Wills" (R. 55).

In thus reasoning and interpreting the aforesaid Act of Congress, the learned Justice ran counter to an applicable decision of his own court rendered in 1905 in the case of *Kann* v. *King,* 25 App. D. C. 182, where the Court of Appeals of the District of Columbia, in construing practically an identical statute, said:

> "The owner of the property involved in the present litigation was, and had been for upwards of twenty-five yeears, Mrs. Marianne A. B. Kennedy, who had inherited it in the year 1871 from a relative, Maria T. Gillis. On the assessment books of the District the property continued to be assessed in the name of Maria T. Gillis, although she had died in the year just named, and was advertised and sold in her name for default in the payment of taxes in the year 1899.
>
> "Now, it is very clear that this assessmenut did not comply with the requirement of the act of Congress. A deceased person cannot be the owner of property in the sense of the law. Especially cannot a deceased person continue for twenty-five years after his death to be the owner of property. Assessment and the other requirements of the tax laws are intended to warn the living owner that his property is being dealt with by the public authorities under their supreme power to devest title in the event of failure to pay the public dues; and that living owner is entitled to the benefit of that warning to its fullest extent, and to the most faithful compliance with the provisions of the statute. Washington v. Pratt, 8 Wheat. 681, 5 L. ed. 714. It will not do, therefore, to take a former owner, and continue his name until it suits the public authorities to change the assessment.
>
> "Provision is made by the statute, perhaps inadequate provision, for the ascertainment by the taxing officers of the names of the owners of property for this purpose of assessment; for the recorder of deeds and the register of wills are both required to report annually to the tax officers all transfers of real estate recorded in their respective offices. This does not seem

> to cover the case of devolution of title by descent, except apparently in the case of a division of an estate and the execution of deeds of partition by the several parties in interest; and it is not apparent what steps the taxing officers are to take to ascertain the living owners of property when the former owner has departed this life, and there is perhaps only one heir and no division of the estate. And yet the law specifically requires such ascertainment of ownership, for it specifically provides that the assessment in the name of the deceased person may not be continued beyond the partition of the estate, or until the estate 'has passed into the hands of some other person.' The new owner is such other person; and the taxing officers must ascertain his identity as best they can, if they would have their proceedings entirely valid and indefeasible. Such is the positive doctrine of the case of Washington v. Pratt. * * *."

The question of the validity or invalidity of the assessment for the 1922 taxes becomes very important upon the question of the ownership of the lots on July 1, 1930, when they became assessable for the taxes for the year ending June 30, 1931.

Were the lots then (July 1, 1930) owned by Fleck, as grantee under the Fraser deed, and therefore assessable in his name, or were they then *owned,* respectively, by the devisees under the respective probated Will of Mary J. B. Wright and Martha L. Compbell (exemplified copies of which had been previously filed in the Probate Court on March 21, 1930. See Section 18, Title 9, page 109 of 1929 D. C. Code for the effect of such filing) and therefore assessable in their names? These are really the pivotal questions in this case and the ones sought to have reviewed by certiorari.

Third: In assessing the lots on July 1, 1930, *under the aforesaid statute,* for the 1931 taxes, the District of Columbia did not assess Lot 21 in the names of the devisees of Mary J. B. Wright or Lot 22 in the names of the devisees of Martha L. Campbell—though their Wills were of record

in the District of Columbia—instead, the District assessed the lots in the name of the grantee (Fleck) under the Fraser quitclaim deed.

The 1931 taxes not having been paid by the devisee-owners of the lots, they were advertised for sale in the name of Fleck *as owner,* and for lack of bidders they were bought in by the District of Columbia (R. 4). Thereafter, by deed dated March 17, 1934, the Commissioners of the District of Columbia sold and conveyed the lots to the Emig Properties Corporation upon the payment of taxes of $14.91, as shown by the recitals in the tax deed (R. 21-24).

Fourth: Petitioner, in its amended complaint (R. 28-29) alleged that the assessment of the lots on July 1, 1930, for the 1922 taxes in the names of the former deceased owners, *as owners at that time,* was not a compliance with the aforesaid quoted Act of Congress.

And petitioner, in its amended complaint (R. 29) alleged that the assessment of the lots on July 1, 1930 for the 1931 taxes in the name of Fleck, *as owner at that time,* was not a compliance with the aforesaid quoted act of Congress.

Both assessments were made under the same statute.

The case came on for hearing in the District Court of the United States for the District of Columbia before Mr. Justice Morris who, on July 1, 1940, filed a memorandum (R. 32), made findings of fact and conclusions of law (R. 33-38), and entered a final decree dismissing the complaints on November 15, 1940 (R. 43). The judgment upon being superseded (R. 43), was appealed and judgment of affirmance was entered by the United States Court of Appeals for the District of Columbia on February 1, 1943 (R. 61).

JURISDICTION.

The judgment in question was entered by the United States Court of Appeals for the District of Columbia on February 1, 1943 (R. 61) pursuant to the decision of the District Court (R. 53). This Court has jurisdiction to re-

view the judgment under Section 240(a) of the Act of February 13, 1925, 43 Stat. 936.

THE QUESTIONS PRESENTED.

The questions presented are:

1. Whether the assessment of taxes made on July 1, 1921, for the year ending June 30, 1922, of Lot 21 in the name of Mary J. B. Wright (then deceased), and of Lot 22 in the name of Martha L. Campbell (then deceased) was a compliance with the aforesaid Act of Congress.

2. Whether the assessment of taxes made on July 1, 1930 for the year ending June 30, 1931, of Lot 21 in the name of Harry Fleck (tax deed), and of Lot 22 in the name of Harry S. Fleck, was a compliance with the aforesaid Act of Congress.

3. Whether the quitclaim deed made by James S. Fraser and wife to Harry S. Fleck, dated November 7, 1929, vested in Harry S. Fleck an independent new title, or did it inure to the benefit of his co-owners under the Wills.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT OF CERTIORARI.

1. The action involves the interpretation of a Statute of the United States applicable to the District of Columbia, viz:

> "All real property in the District of Columbia, except as hereinafter provided, shall be assessed in the name of the owner, or trustee or trustees of the owner thereof. All undivided real property of a deceased person may be assessed in the name of such deceased person until the same is divided, according to law, or has otherwise passed into the possession of some other person or persons; and all real property, the ownership of which is unknown, shall be assessed 'owner unknown.'" D. C. Code (1940) s. 47-701 (D. C. Code (1929) tit. 20, s. 696).

2. The United States Court of Appeals for the District of Columbia, in its decision (R. 53-60), has decided an important real estate question of local federal law in conflict with the applicable decision of this Court in *Washington* v. *Pratt,* 8 Wheat. 681, 5 L. ed. 714.

3. The United States Court of Appeals for the District of Columbia, in construing the aforesaid Act of Congress, has decided an important question of local federal law in conflict with the Statute and an applicable decision of *Kann* v. *King,* 25 App. D. C. 182, *ante.*

4. The judgment of the United States Court of Appeals for the District of Columbia entered in this case upsets the settled interpretation of said Act of Congress as made by the United States Court of Appeals for the District of Columbia in 1905 in the case of *Kann* v. *King, supra.*

Wherefore your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Court directed to the United States Court of Appeals for the District of Columbia, commanding that Court to certify and send to this Court for review and determination, on a day certain to be named, a full and complete transcript of the record and all proceedings in the case numbered and titled on its docket No. 7802, W. C. & A. N. Miller Development Co., a corporation appellant, v. Emig Properties Corporation, appellee, and that the said judgment of the United States Court of Appeals for the District of Columbia may be reversed by this Court, and that your petitioner may have such other and further relief in the premises as to this Court may seem meet and just; and your petitioner will ever pray.

W. C. & A. N. Miller Development Co.,
a corporation,

By George C. Gertman,
808 American Security Building,
730 15th Street,
Attorney for Petitioner.

(21)

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W. C. & A. N. MILLER DEVELOPMENT CO., *Petitioner,*

v.

EMIG PROPERTIES CORPORATION, *Respondent.*

BRIEF OF RESPONDENT, EMIG PROPERTIES CORPORATION, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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Counsel for Respondent.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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OCTOBER TERM 1942.

No. .....

W. C. & A. N. MILLER DEVELOPMENT CO., *Petitioner,*

v.

EMIG PROPERTIES CORPORATION, *Respondent.*

BRIEF OF RESPONDENT, EMIG PROPERTIES CORPORATION, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

OPINION BELOW.

The memorandum opinion and the decree of the District Court of the United States for the District of Columbia (R. 32, 43) are unreported. The opinion of the United States Court of Appeals for the District of Columbia (R. 53-60) has not yet been reported.

JURISDICTION.

The decree of the United States Court of Appeals for the District of Columbia was entered on February 1, 1943 (R. 61). The petition for writ of certiorari was filed March 12, 1943. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

STATEMENT.

The petitioner, Miller Development Co., seeks to have a tax deed from the Commissioners of the District of Columbia to the respondent, Emig Properties Corporation, declared invalid and the cloud created thereby on petitioner's title to the property,—designated on the assessor's books for tax purposes as Lots 21 and 22 in Square 1476—, removed. In the following is given, in tabular form, the chain of title of record and by tax deed, together with other pertinent data of record, for said Lots 21 and 22, Square 1476, in the City of Washington, D. C.

Tax Title

Assessed July 1, 1921, for fiscal year ending June 30, 1922, in name of *Mary J. B. Wright* (R. 34)

Advertised and sold in same name January 10, 1923, to *District of Columbia,* which held property, **unredeemed and currently accruing taxes remaining unpaid, for over six years,** until, by deed of April 23, 1929, recorded in Liber 6318, folio 411,* it sold property (R. 34) to — **First Divesting of Record Title.**

James S. Fraser, who, by deed of November 7, 1929, recorded in Liber 6406, folio 415,** sold to

Harry S. Fleck, who by deed of May 24, 1930, **recorded July 10, 1935,** in Liber 6905, folio 245, conveyed to

Frances J. Tarrant, employee of, and straw for, petitioner (R. 34).

Taxes become again delinquent. Assessed July 1, 1930, for fiscal year ending June 30, 1931, in name of *Harry Fleck,* (R. 34, 35)

Advertised and sold in same name, January 14, 1932, to *District of Columbia.*

Sold again for taxes for fiscal year ending June 30, 1932, to *James S. Fraser,* on January 17, 1933, (R. 8)

Sold again for taxes for fiscal year ending June 30,.1933, to *W. C. Miller,* president of petitioner, on January 16, 1934, R. 8)

Period of redemption for tax sale of January 14, 1932, having expired, *District of Columbia,* by deed of March 17, 1934, recorded March 20, 1934 in Liber 6784, folio 117, in consideration of taxes for the fiscal years ending June 30, 1931, and June 30, 1934, sold (R. 36) to — **Second Divesting of Record Title.**

Respondent, who redeemed tax sales of January 17, 1933, and January 16, 1934, on September 6, 1934. (R. 12)

---

* Date of entry at Office of Recorder of Deeds May 4, 1929.

** Date of entry at Office of Recorder of Deeds December 29, 1929.

Record Title

Acquired by deed of July 1, 1895, recorded August 20, 1895, by

Mary J. B. Wright

who resided and died testate March 13, 1921, at Bellwood, County of Blair, Pennsylvania. By will, exemplified copy of which was filed in the District of Columbia only March 21, 1930, she devised to

Martha L. Campbell,
for life, remainder in fee to

Kate Wertz Fleck and *Harry S. Fleck,*
as tenants in common, who, by deed of May 24, 1930, recorded July 10, 1935, conveyed to

Frances J. Tarrant,
employee of, and straw for, petitioner, who by deed of September 10, 1935, recorded November 13, 1935 in Liber 6941, folio 537 conveyed to

Petitioner.
(R. 33)

Tax Title

Assessed July 1, 1921, for fiscal year ending June 30, 1922, in name of *Martha L. Campbell,* (R. 34)

Advertised and sold in same name January 10, 1923, to *District of Columbia,* which held property, **unredeemed and currently accruing taxes remaining unpaid, for over six years,** until, by deed of April 23, 1929, recorded in Liber 6318, folio 411,* it sold property (R. 34) to — **First Divesting of Record Title.**

James S. Fraser, who by deed of November 7, 1929, recorded in Liber 6406, folio 415,** sold to

Harry S. Fleck, who, by deed of December 12, 1931, **recorded July 10, 1935** in Liber 6905, folio 247, conveyed to

Frances J. Tarrant, employee of, and straw for, petitioner (R. 34).

Taxes become again delinquent. Assessed July 1, 1930, for fiscal year ending June 30, 1931, in name of *Harry Fleck,* (R. 34, 35)

Advertised and sold in same name January 14, 1932, to *District of Columbia.*

Sold again for taxes for fiscal year ending June 30, 1932, to *James S. Fraser,* on January 17, 1933, (R. 8)

Sold again for taxes for fiscal year ending June 30, 1933, to *W. C. Miller,* president of petitioner, on January 16, 1934, (R. 8)

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---

* Date of entry at Office of Recorder of Deeds May 4, 1929.

** Date of entry at Office of Recorder of Deeds December 29, 1929.

T 22.

Record Title

Acquired by deed of May 11, 1895, recorded May 14, 1895 in Liber 2021, folio 205, by

Martha L. Campbell,

who resided and died testate December 1, 1918, at Bellwood, County of Blair, Pennsylvania. By will, exemplified copy of which was filed in the District of Columbia only March 21, 1930, she devised to

Mary J. B. Wright,

for life, thereupon to

*Harry S. Fleck,** trustee for J. Hurst Campbell, n. c. m., for life, remainder one half each to

*Kate Wertz Fleck,** who conveyed December 12, 1931 to

*John Irwin,** *Gwendolyn Irwin** *Lenore Irwin,** who conveyed December 12, 1931, and April 24, 1935, to

Frances J. Tarrant, employee of, and straw for petitioner, who by deed of September 10, 1935, recorded November 13, 1935 in Liber 6941, folio 537, to

Petitioner.
(R. 33)

* Acting under decree of the Supreme Court of the District of Columbia, in Equity Cause 52117, dated November 9, 1931, rendered, upon petition of the trustee and all remaindermen, for the purpose of improving the investment, Harry S. Fleck, as trustee for J. Hurst Campbell, sold and conveyed by deed of December 12, 1931, recorded July 10, 1935, to Frances J. Tarrant, in which conveyance the above remaindermen, Kate Wertz Fleck, Gwendolyn and Lenore Irwin joined voluntarily, John Irwin, by order of the court of January 12, 1935, on April 24, 1935, (R. 13, 33, 34).

SUMMARY OF ARGUMENT.

Point One: The decision of the United States Court of Appeals for the District of Columbia (R. 53-60) is neither in conflict with the decision of this Court in *Washington* v. *Pratt,* (1823), 8 Wheat. 681, 5 L. Ed. 714, nor with the decision of the United States Court of Appeals for the District of Columbia in *Kann* v. *King,* (1905), 25 App. D. C. 182. The case at bar is clearly distinguishable from each of the aforementioned two decisions by reason of its particular facts as well as the law applicable thereto.

Point Two: The decision of the United States Court of Appeals for the District of Columbia entered in the case at bar does not upset any settled interpretation of the Act of Congress of August 14, 1894, 28 Stat. 282, ch. 287, Sec. 1 (D. C. Code (1940) Sec. 47-701; D. C. Code (1929), Title 20, Sec. 696), because, independently from any statutory interpretation, it rests, *expressis verbis* (See: Opinion below, R. 57-58, and R. 58, Note 10), upon the following two undisputed facts:

(1) The assessment for the fiscal year ending June 30, 1931, of Lot 22 was made, and advertised for sale, in the name of Harry S. Fleck (R. 34, 35), who was the trustee of the owner under the will of Martha L. Campbell (R. 33) and, as such, the proper person contemplated by the statute as one in whose *name* the property should be assessed; and,

(2) The petitioner offered no explanatory excuse, with regard to either lot, for the laches on the part of the record owners under the wills of Mary J. B. Wright and Martha L. Campbell, respectively, in view of their systematic non-payment of taxes as well as their acquiescence in the now alleged irregularity of the tax sale of January 10, 1923, and the now alleged consequent invalidity of the deed of the Commissioners of the District of Columbia, dated April 23, 1929, to James S. Fraser (R. 34). Under these circumstances the petitioner cannot obtain the relief sought because of laches.

Point Three: Even where the court below in its decision construed the Act of Congress of August 14, 1894, 28 Stat. 282, ch. 287, Sec. 1 (D. C. Code (1940) Sec. 47-701; D. C. Code (1929), Title 20, Sec. 696), such construction was made in reference to the particular facts of the case at bar and is not necessarily in conflict with the Court's prior construction of the same statute in *Kann* v. *King,* supra. Since in the case at bar, the record owners of the property under the respective wills of Mary J. Wright and Martha L. Campbell were non-residents, and since the property was unimproved land with no one in ostensible possession, the *only* sources of information from which the name of the owner, or any change in ownership, could possibly be obtained by the taxing authorities of the District of Columbia were public records disclosing such information. As far, therefore, as the court below construed the above statute, it did so in connection with other statutory provisions *in pari materia,* dealing with the furnishing of *record* information to the assessor.

ARGUMENT.

Point One.

(a) The petitioner claims that the court below "in its decision (R. 53-60), has decided an important real estate question of local federal law in conflict with the applicable decision of this Court in *Washington* v. *Pratt,* 8 Wheat. 681, 5 L. Ed. 714." (Petition, 9). This decision construed the eighth section of the Act of Congress of 1812, entitled, "An act, further to amend the act for the incorporation of the city of Washington" which, *inter alia,* provided for public notice to be given of the time and place of sale of unimproved lots in tax default, such notice to state *"the name of the person or persons to whom the lots may have been assessed".* In interpreting this statutory provision this Court stated that it "depends upon the question, whether the person 'to whom', in the language of the clause cited,

'the lots may have been assessed' can mean any other than the actual owner of such lot", and it found that "they must be held to mean the name of him who was the owner at the time of the assessment."

In contradistinction to the statute under which *Washington* v. *Pratt, supra,* was decided, the statute applicable to the case at bar, although it requires that the property "shall be assessed in the name of the owner", does not so provide as an *absolute* requirement. It is qualified by a very important exception which the petitioner appears to ignore in his complaint. That qualification is that—

> "All undivided real property of a *deceased* person may be assessed *in the name of such deceased person* until the same is divided, according to law, or has otherwise passed into the possession of some other person or persons." (Italics supplied)

If, therefore, this Court should find that the facts, and the law applicable thereto, presented in *Point Two, infra,* are not sufficient as such, independently from any interpretation of the aforequoted statutory qualification—, to support the decision of the court below, it is submitted that it is the above quoted statutory qualification only which was presented to the court below for consideration and interpretation, *the real question being under what conditions may property of a deceased non-resident person lawfully continue to be assessed in the name of the deceased owner?* (See *Point Three, infra.*)

(b) It is petitioner's further contention that the decision of the court below is also in conflict with the decision of the Court below in *Kann* v. *King, supra.*

Counsel for the respondent respectfully submit that this contention is untenable in view of the fact that, on the interlocutory appeal of Henry Randall Webb, appellant in the companion case to *Kann* v. *King, supra,* from the order of the Supreme Court of the District of Columbia granting an injunction *pendente lite,* it was decided by the court below—

Webb v. *King*, 21 App. D. C. 141—, and, therefore, established as the law of the case on that point in *Kann* v. *King*, *supra*, that the delay of the appellee, Caroline King, in redeeming the tax certificate was not such, under the circumstances of the case, as to preclude equitable relief, that is to say, *that the court below failed to "find, as a matter of law . . . that there was any such delay or laches on her part as would preclude her from relief in equity."*

Counsel for the respondent respectfully submit that the absence of laches in the *Kann* v. *King* case, in connection with the further facts, to wit, that the owner of the property, Marianne A. B. Kennedy as well as Maria T. Gillis, the deceased former owner, were both residents of the District of Columbia; that Mrs. Kennedy, admittedly, had been for more than twenty-five years prior to the tax sale the fee simple owner, in severalty and in possession, of the property,* whereas in the case at bar the deceased owners were non-residents of the District of Columbia, and the lots were unimproved, hence, no one in ostensible possessions, distinguish the *King* v. *Kann* case clearly from the case at bar. Mrs. Kennedy's possession would have been notice sufficient even as against an innocent purchaser from a record owner without notice (*U. S.* v. *Howgate*, (1883), 2 Mackay (D. C.) 408).

Further, in order to illustrate the different equitable background of the decision in *Kann* v. *King*, *supra*, the following language of the court in *Webb* v. *King*, *supra*, should be noted:

> "But the circumstances under which this tax deed was procured are manifestly such as should be investigated by a court of equity. If it was procured, as alleged in the bill of complaint, for the purpose of causing the lessee to give up the property or to afford the oppor-

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* See Brief for Appellee, No. 1456, Louis Kann, Sigmund Kann, and *Myer Cohen* v. *Caroline King;* No. 1457, Henry Randall Webb, Executor of *Marianne A. B. Kennedy* v. *Caroline King*, Records and Briefs, Court of Appeals, D. C., Vol. 121, p. 36.

> tunity of ousting her from it, so that the other parties who are desirous to lease it, should be able to consummate their arrangement with the owner for a new lease of the property to themselves, then beyond question a court of equity can grant relief against all parties, and the tax deed cannot be permitted to stand in the way of such equitable relief".

And in *King* v. *Kann, supra,* the court stated, in positive form, as follows:

> "For that there was an arrangement between the defendants whereby the tax certificate was to be used to oust the complainant from the property, we think is too plain to be reasonably questioned. There was undoubtedly a concurrence of effort for that purpose, perhaps no formal combination or preconcerted action. But it matters not what we call it. The undoubted fact is that there was cooperation between the defendants to use the tax certificate to the detriment of the complainant's rights."

The record in the case at bar does not even remotely permit, and petitioner does not so contend, an analogy with the facts which prompted equitable relief in the *Kann* v. *King* case.

Point Two.

(a) The court below stated "even if assessment in the names of the record holders under the wills were required", —that is to say, even if it were proper to apply the construction of the respective statutes with reference to the particular facts underlying *Washington* v. *Pratt, supra,* and *Kann* v. *King, supra,* to the facts of the case at bar—, "this case is made easier because . . . the 1931 assessment in the name of Harry S. Fleck would be proper as to lot 22, being in the name of the trustee" (R. 57). The court below, then, annotates the foregoing statement, presenting such a concise and conclusive argument in support thereof, that counsel for the respondent wish to adopt it *verbatim.* It reads:

"Section 47-701, 1940 Code, provides that assessment shall be 'in the name of the owner, *or trustee or trustees of the owner thereof.*' (Italics supplied) Since the trustee is the legal owner of the property and as such liable for the payment of the taxes and responsible for preservation of the property, assessment in the name of the trustee is valid, without designating this capacity or the names of the holders of the beneficial interest. 3 Bogert, Trusts and Trustees (1935) §602; 2 Scott, Trusts (1939) §§176, 265. For cases, see, e.g., Dunham v. City of Lowell, 200 Mass. 468, 86 N. E. 951 (1909); Hills v. City of Muskegon, 158 Mich. 551, 123 N. W. 21 (1909); Ellsworth College of Iowa Falls v. Emmett County, 156 Iowa 52, 135 N. W. 594 (1912); Assessors of Boston v. Neal, Mass. , 40 N. E. (2d) 893 (1942); cf. Millsaps v. City of Jackson, 78 Miss. 537, 30 So. 756 (1901); State v. Clark, 77 Minn. 190, 79 N. W. 829 (1899); Animal Rescue League v. Bourne's Assessors, 310 Mass. 330, 37 N. E. (2d) 1019 (1941); McClellan v. Board of Review of Jo Davies County, 200 Ill. 116, 65 N. E. 711 (1902); Frye v. Burke, 57 Ohio App. 99, 12 N. E. (2d) 152, 158 (1936); Ceepeear School District v. Security Trust Co., (1919) 1 West Week. Rep. 615." (R. 57, note 9.)

(b) The court below further stated,—after having disposed of Lot 22 as quoted in the preceding subsection (a)—, that "the only irregularity would be that the designation of Lot 21 did not include the name of Kate Wertz Fleck, the wife of Harry S. Fleck. Such an irregularity should not invalidate the assessment, in view of the laches in the non-payment of taxes from 1921 to 1929 and again from 1931 to 1934." (R. 57-58, R. 58, notes 10 and 11.)

It is respectfully submitted that the foregoing holding of the court below is the settled rule of law in the District of Columbia. In 1893 the court below decided that a bill in equity by the holder of the record title of real estate to remove a cloud created by a tax deed is not maintainable in the absence of evidence explaining the delay in attempting to remove such cloud, because of the laches on the part of

the complainant or those under whom he claims (*Knox* v. *Gaddis,* 1 App. D. C. 336). And in 1905 the court below held in *Guy* v. *District of Columbia,* 25 App. D. C. 117, a proceeding in certiorari in the Supreme Court of the District of Columbia to bring up the record of certain assessments and a tax sale thereunder, and for a cancellation of the tax sale, as follows:

> "The petitioner, by becoming a recent purchaser of the property in 1904, did not relieve himself from the effect of the period of long delay that had been suffered to elapse since the issue of the certificate."

In the case at bar the record shows that the record owners of Lots 21 and 22, under the wills of Mary G. B. Wright and Martha L. Campbell, respectively, and those claiming under them, including the petitioner, not only systematically neglected to pay the taxes on said properties from 1921 to 1929, and again from 1931 to 1934, but also failed to challenge in any way the tax sale of January 10, 1923 (R. 2), or the tax deed, dated April 23, 1929, by the Commissioners of the District of Columbia to James S. Fraser (R. 2) after the District had held the property, unredeemed and currently accruing taxes thereon remaining unpaid, for over six years (Jan. 10, 1923 to April 23, 1929), until now, for the first time, the petitioner, in its amended complaint, dated December 18, 1939 (R. 28-29), makes an attempt to remove the alleged cloud upon its title to said lots. The petitioner makes this attempt in the face of the fact of record that Harry S. Fleck, grantor of the petitioner, purchased, and accepted a deed, dated November 7, 1929, conveying the properties to him, from James S. Fraser (R. 34) *thereby recognizing the regularity rather instead of challenging the alleged irregularity, of the proceedings by which James S. Fraser acquired an interest in the properties.*

Point Three.

Although counsel for the respondent, in view of their argument in *Point Two* hereof, do not believe that the facts of the case at bar, necessitate a construction of the Act of Congress of August 14, 1894, 28 Stat. 282, ch. 287, Sec. 1 (D. C. (1940) Sec. 47-701; D. C. Code (1929), Title 20, Sec. 696), they respectfully submit the following considerations with regard to the holding of the court below that "it was proper for the Commissioners to assess the lots for the 1922 taxes in the names of the deceased 'owners' because the wills had not then been probated, and it is not shown that the Commissioners were given notice of their deaths or who were to be 'owners' under their wills" (R. 55), or, that "until the wills have been probated in the District, or notice has been given the assessor in some manner, or the property has passed into possession of other persons, Section 47-701 does not require the assessment in the names of the deceased 'owners' to be declared invalid." (R. 56, note 3):

As pointed out before, on page 7, *supra,* the statutory requirement of assessment in the name of the owner is subject to an important qualification, namely, that real property of a deceased person may be assessed in the name of the deceased owner "until the same is divided, according to law, or has otherwise passed into the possession of some other person or persons." It is submitted that this statutory qualification must, like any other statute receive a sensible construction in the light of the purpose and object of the statute and not one, which, in disregard of the obvious general legislative intent of levying and *collecting* taxes, will tend to defeat such purpose and object, or lead to absurd consequences, or impose impossible conditions. It would appear that this has been a rule of statutory constructuion of long standing in this Court, which needs no further discussion.

Carter's Heirs v. *Cutting,* (1814) 12 U. S. 251, 8 Cranch 251, 3 L. Ed. 553.

American Fur Co. v. *United States,* (1829) 27 U. S. 358, 2 Pet. 358, 76 L. Ed. 450.
Harris v. *Runnels,* (1851) 53 U. S. 79, 12 How. 79, 13 L. Ed. 901.
United States v. *Kirby,* (1868) 74 U. S. 482, 7 Wall. 482, 19 L. Ed. 278.

The obvious purpose and object of the above cited statute is to collect taxes for the maintenance and support of the municipal government of the District of Columbia, without which it could not exist, and the duties imposed upon its agents in the assessment and collection of the taxes must be construed so as to be possible of performance.

The law does not require, in contradistinction to what the petitioner seems to infer, as a condition precedent to the right to assess a tax, that the assessor shall have an examination made as to the validity of the title to every piece of taxable property and an inquiry into all matters *in pais* affecting such titles. Quite obviously any undertaking of such nature on the part of the assessor would be futile. Therefore, the court below was entirely correct in stating:

> "But this does not require that the Commissioners be burdened with searching out the interests under the wills (to wit, which were filed in the District only ten years after their domestic probate in Pennsylvania, that is, on March 21, 1930) and making a decision on their validity in view of their apparent extinction by a valid tax title to a stranger." (R. 57.) (Interpolation supplied)

The expense of such procedure would probably far exceed the tax and the time consumed would be an impossible barrier to the performance of such a duty.

Consequently, the statutory requirement that real property *shall* be assessed in the name of the owner, or *may* be assessed in the name of the deceased owner, must be read together with other statutory provisions regulating the sources of information from which knowledge of the name of the owner, or change in ownership, (—if not evidenced

by ostensible possession, or ascertainable in any other manner—), is to be obtained, namely from the recorder of deeds and the register of wills, in whose offices transfers of title by deed or device or descent would ordinarily appear. By Act of Congress of March 3, 1899, 30 Stat. 1377, ch. 457, Sec. 3 (D. C. Code (1940) Sec. 47-403; D. C. Code (1929), Title 20, Sec. 673) it was enacted as follows:

> The Commissioners of the District of Columbia shall cause to be made a daily transcript, and entry on the records of said assessor, of the designations of lots or parcels of land in said District appearing in instruments of conveyance received for record in the office of the recorder of deeds, and the designations of lots or parcels of land in said District transferred by probated wills; and the person or persons whom the Commissioners of said District may designate for the purpose of making such transcript shall for this purpose at all times during office hours have full access to the records of the recorder of deeds and the register of wills of said District; and the assessor shall daily furnish the surveyor with a copy of such transcript."

Another possible source of information was made available by Act of Congress of February 23, 1905, 33 Stat. 738, ch. 735, sec. 4 (D. C. Code (1940) Sec. 47-407; D. C. Code (1929) Title 20, Sec. 677), which provides as follows:

> "For the purpose of keeping said books constantly current and up to date, the said commissioners shall cause an employee of the surveyor's office to make daily transcripts of all deeds of conveyance, wills, condemnations, decrees, and other instruments or proceedings by which boundaries are changed; for which purpose, such employee of the surveyor's office shall at all times during business hours have full and free access to all records of the recorder of deeds, register of wills, clerk of the District Court of the United States for the District of Columbia, marshal, and other officials; and the surveyor shall furnish to the assessor a copy of such transcript, from which a duplicate set of taxation and assessment plat books shall be maintained by the said

assessor: Provided, That the current series of taxation and assessment plat books in the surveyor's office shall be the standard book of reference for all purposes of assessment and taxation by all departments of the government of the District of Columbia."

It is respectfully submitted that the aforequoted statutory provisions are acts *in pari materia* with the Act of Congress of August 14, 1894, 28 Stat. 282, ch. 287, Sec. 1 (D. C. Code (1940) Sec. 47-701; D. C. Code (1929), Title 20, Sec. 696), and, as such, must be considered together as forming one act. This has been the rule of law as expressed by the Court below in *Calvert* v. *Terminal Taxicab Co.,* (1916), 48 App. D. C. 119, where it held that it is a rule of construction that all parts of the Code *in pari materia* must be read in the light of each other and harmonized wherever possible.

This Court has held as early as 1809 that acts *in pari materia* are to be construed together as forming one act (*Alexander* v. *Mayor and Commonalty of Alexandria,* 9 U. S. 1, 5 Cranch 1, 3 L. Ed. 19), and, even prior to that decision, has held in *Talbot* v. *Seeman,* (1801) 5 U. S. 1, 1 Cranch 1, 2 L. Ed. 15, that the provisions in one of several acts forming a general system are explanatory of other parts of the same system. Any interpretation of Section 47-701, D. C. Code (1940) disregarding Sections 47-403 and 47-407 must necessarily lead to a situation whereby the owner of real property under an unrecorded deed or will can claim that an assessment of his property was invalid because made and continued in the name of his grantor or testator, the owner of the property as shown by the record. It is respectfully submitted that a construction of Section 47-701 D. C. Code (1940) which would permit the aforestated possibility, would lead to the absurd consequence of legalized tax evasion, and, in practical effect, mean a repeal of this Section by rendering its execution impossible. The petitioner itself fell victim to the fallacy which a construction of the statute as suggested by its counsel would involve. To be consistent with his theory, counsel for the petitioner ought not to have

argued that Lot 21 should have been assessed on July 1, 1930 in the names of Harry S. Fleck and Kate Wertz Fleck, but in the name of Frances J. Tarrant, the employee of, and straw for, the petitioner, since it was to the latter that Harry S. Fleck and Kate Wertz Fleck had conveyed their interests on May 24, 1930, which deed, however, was not recorded until July 10, 1935 (R. 33).

CONCLUSION.

It is respectfully submitted that no question is herein presented which warrants the granting of a writ of certiorari, and that the well reasoned opinion of the United States Court of Appeals for the District of Columbia shows that the petition for writ of certiorari is completely lacking in merit and should be denied.

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